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Supreme Court, U.S.
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No. 93-657

In The

Supreme Court of the United States

October Term, 1993

CITY OF CHICAGO,

Petitioner,

v.

MACEO G. WILLIS, JR.,

Respondent.

On Petition for Writ Of Certiorari To The United States Court of Appeals For The Seventh Circuit

BRIEF OF RESPONDENT IN OPPOSITION TO THE PETITION

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COUNTER STATEMENT OF THE QUESTION PRESENTED

Whether the Seventh Circuit Court of Appeals correctly followed the substantive law established in *Gerstein v. Pugh*, 420 U.S. 103 (1975), and *County of Riverside v. McLaughlin*, 500 U.S.___, 111 S.Ct. 1661 (1991), in determining that the police could not detain an arrestee past the first available court call after the completion of the administrative steps incident to arrest in order to investigate other possible criminal charges.

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BRIEF OF RESPONDENT IN OPPOSITION TO THE PETITION

The Respondent, Maceo G. Willis, Jr., respectfully requests that this Court deny the Petition for Writ of Certiorari seeking review of the Seventh Circuit's opinion as to the City of Chicago's liability in this case. That opinion is reported at 999 F.2d 284 (7th Cir. 1993).

COUNTER STATEMENT OF THE CASE

Clarification of Facts in Petitioner's Statement

Pursuant to Rule 15.1, this Response clarifies an erroneous statement of fact contained in the Petition.

Petitioner's statement that Respondent was not taken to the first available court call "because the police decided to determine whether he had committed the Area 2 rapes as well before charging and bond decisions were made at his initial judicial appearance on the Area 3 rapes" [Petition, p. 3] is not supported by citation to the record and constitutes an after-the-fact justification for the police conduct.[1] As admitted in Petitioner's statement [Petition, p. 3] charges against Respondent had already been approved by an Assistant State's Attorney almost twelve hours before the first available court call. Thus, the delay was wholly unrelated to making charging decisions related to the crimes for which Respondent was arrested. Under the Illinois Code of Criminal Procedure (725 ILCS 5/100-1 *et seq.*), it is the State's Attorney's responsibility, and not that of the police, to provide information for the court's consideration in determining the amount and conditions of bail. There is no basis in the record for a claim that the police investigation into the Area 2 crimes was undertaken at the request of the State's

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[1] Indeed, at various times before the district court, Petitioner attempted to justify the delay in bringing Respondent before a neutral magistrate by claiming that because of a court holiday no neutral magistrate was available or that Respondent was not processed in time to transport him to court. Each of these claims was demonstrated to be false and eventually abandoned by Petitioner. R. 102 p. 2, n.2.

Attorney to assist either with charging or bond decisions. In addition, the Seventh Circuit specifically rejected the Petitioner's suggestion that its written policy of extended detention was intended to permit delay only when necessary to make informed charging and bail decisions. *Willis*, 999 F.2d at 289, n.4. The court concluded:

> The very broad language of the policy belies such an interpretation. It allows detention of an arrestee for an unspecified period whenever Criminal Investigation Personnel believe that an investigation ought to continue.

Willis, 999 F.2d at 289, n.4.

ARGUMENT: REASONS WHY THE PETITION SHOULD BE DENIED

THE PETITION RAISES NO SPECIAL OR IMPORTANT QUESTIONS, NO CONFLICT WITH ANOTHER UNITED STATES COURT OF APPEALS, AND NO EXTREME DEPARTURE FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS SO AS TO CALL FOR AN EXERCISE OF THIS COURT'S POWER OF SUPERVISION.

The Petition should be denied because it is completely lacking in the "special and important reasons" for granting a petition for writ of certiorari required by Rule 10.1. This case presents no new questions of law. Rather, the portion of the Seventh Circuit's decision from which the Petitioner seeks review constitutes a reasoned and reasonable application of this Court's decision in *County of Riverside v. McLaughlin*, 500 U.S.___, 111 S.Ct. 1661 (1991). There is no conflict between the Seventh Circuit's

decision and any decision of another Court of Appeals. Finally, nothing in the Seventh Circuit's decision "so far departed from the accepted and usual course of judicial proceedings . . . as to call for an exercise of this Court's power of supervision" as required by Rule 10.1(a).[2]

A. The Seventh Circuit Correctly Applied *Gerstein* And *McLaughlin* To The Facts Of This Case.

This case presents the question of whether this Court's decisions in *Gerstein v. Pugh*, 420 U.S. 103 (1975), and *McLaughlin* permit the police to delay presenting an arrestee to a magistrate for a probable cause hearing so the police can investigate whether the arrestee committed other crimes. After analyzing *Gerstein* and *McLaughlin*, the Seventh Circuit had no trouble in concluding that Respondent "has demonstrated convincingly the unreasonableness of his prolonged detention." *Willis*, 999 F.2d at 288. The Seventh Circuit's analysis is both succinct and compelling. It warrants repeating:

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[2] Obviously, Petitioner believes that the district court's and appellate court's decisions finding Petitioner's policy of extended detention unconstitutional are important. Respondent agrees that these are important decisions and that they will have a significant impact on how Petitioner processes arrestees. Regardless of the impact, however, the constitutional issues requiring the invalidation of Petitioner's policy entail a relatively straightforward (albeit hotly contested) application of the principles established in *Gerstein* and *McLaughlin* and not a new or novel constitutional principle which warrants review by this Court.

> The parties agree that [Respondent] was detained solely to permit the police to place him in lineups relating to other uncharged crimes. The arrest yet to be judicially scrutinized was used as an opportunity to build a separate case against him. While such delay is not explicitly mentioned as unreasonable in *McLaughlin*, the Court's opinion, in our view, leaves little doubt as to the appropriate course. The Court condemned delays for the purpose of "gathering additional evidence to justify the arrest" as unreasonable and thus determined them to be an illegitimate basis for postponing a judicial determination of probable cause. ___U.S. ___ at ___, 111 S.Ct. at 1670. The delay to which [Respondent] was subjected is certainly analogous. In both circumstances, a person is subjected to unreasonably prolonged custody without judicial scrutiny so that the police can undertake further investigatory steps that require the presence of the defendant, a presence that cannot properly be required without a prior judicial determination of probable cause.

999 F.2d at 288-289. The court's reasoning is correct and does not require further review by this Court.

Petitioner endeavors to justify its policy's constitutionality by contending that the delay permitted by *Gerstein* and *McLaughlin* before an arrestee must be brought before a neutral magistrate "can only have been intended to allow the police and prosecution to gather information so that the judicial officer may make an informed bail determination." [Petition, p. 13] Unfortunately for Petitioner's supposition, *McLaughlin* is explicit as to what circumstances permit some reasonable delay. *McLaughlin* acknowledges and permits delays caused by paperwork

and logistical problems to allow the police to "cope with the everyday problems of processing suspects through an overly burdened criminal justice system." ___ U.S. at ___, 114 L.Ed.2d at 62. The type of delay which Petitioner wants approved here has nothing to do with "the everyday problems of processing suspects through an overly burdened criminal justice system."

Instead, as the Seventh Circuit correctly reasoned, the delay here was analogous to "delays for the purpose of gathering additional evidence to justify the arrest." This type of delay was explicitly condemned in *McLaughlin*, 114 L.Ed.2d at 63. Petitioner contends that this delay was permissible because its policy permitted delay only after an arrest supported by probable cause and only when there was a necessity that the police to continue the investigation. [Petition, p. 16] Petitioner's analysis runs directly counter to *Gerstein*, where this Court, in reliance on *Johnson v. United States*, 333 U.S. 10, 13-14 (1948), observed:

> The point of the Fourth Amendment, which often is not grasped by zealous officers, is not that it denies law enforcement the support of the usual inferences which reasonable men draw from evidence. Its protection consists in requiring that those inferences be drawn by a neutral and detached magistrate instead of being judged by the officer engaged in the often competitive enterprise of ferreting out crime.

Like the zealous officers in *Johnson*, the Petitioner fails to grasp the reasonable limitations imposed on it by the Constitution. Here, it makes no difference that the police believed they had probable cause to arrest Respondent.

Once Respondent was arrested and the police had completed the necessary paperwork and logistics, it became incumbent on them to take Respondent before a neutral magistrate so that the neutral magistrate could determine the existence of probable cause.

Petitioner protests that Respondent's detention was necessary in order to provide the court with "all relevant information" for making bail determinations. The Seventh Circuit correctly rejected this claim and concluded that "the magistrate could have been informed of the status of the Area 2 investigation at the bail hearing and could have factored this consideration into the [bail] determination." *Willis*, 999 F.2d at 289. Petitioner complains that this still requires judges to make charging decisions before "all relevant information is available." [Petition, p. 16, n.8] Nothing in *McLaughlin*, however, permits the police to detain an arrestee for up to 48 hours while they track down "all relevant information" for a bail determination.

Indeed, given the range of potentially relevant information for determining bail, a 48-hour detention could always be justified on this basis. For example, the Illinois Criminal Code makes all types of information relevant in setting bail, including the arrestee's employment, financial resources, character and mental conditions, prior conduct and the likelihood of the filing of a greater charge. 725 ILCS 5/110-5(a). Indeed, the text of this statutory provision, and the information it deems relevant, is extremely lengthy.[3] It is difficult to imagine a scenario in

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[3] The full text of this provision is set forth in the Appendix to this Brief in Opposition.

which it would not take at least 48 hours for the police to investigate all information deemed relevant by this provision.

The Illinois Code of Criminal Procedure, however, contemplates that the bail determination will be predicated "on the basis of available information." 725 ILCS 5/110-5(a). It does not authorize the police to detain an arrestee until all possible relevant information is ascertained and verified. Nothing in *Gerstein* or *McLaughlin* countenances such delay either.

Moreover, should the police subsequently uncover additional information relevant to the bail determination, the Illinois Code of Criminal Procedure provides that the prosecutor may apply to have bail increased. 725 ILCS 5/110-6. Of course, here, had additional investigation established probable cause for the Area 2 crimes, bail would have been set for these new crimes at which time the court could have considered that Respondent was already charged with the Area 3 crimes.

In short, nothing in *Gerstein* or *McLaughlin* permits the police to delay bringing an arrestee before a neutral magistrate so they can conduct a further investigation. Where, as here, there were no logistical problems in bringing the arrestee before a magistrate, a desire on the part of the police to detain an arrestee to investigate other crimes clearly runs afoul of *Gerstein* and *McLaughlin*.

B. There Is No Conflict Between The Circuits Which Warrants Granting The Petition.

In its effort to find a basis for granting its Petition, Petitioner posits a false conflict between this decision and the Ninth Circuit's decision in *Kanekoa v. City and County of Honolulu*, 879 F.2d 607 (9th Cir. 1989), cert. denied, 111 S.Ct. 2055 (1991), and the Fifth Circuit's decision in *United States v. Adekunle*, 2 F.3d 559 (5th Cir. 1993). No conflict exists between the decision here and the decision in either of these other two cases.

Kanekoa, which was decided before *McLaughlin*, involved detention of intoxicated arrestees until they were sober enough to be interviewed. The Ninth Circuit determined that such interviews were part of the administrative steps incident to arrest and, thus, permissible under *Gerstein*. The Ninth Circuit cautioned, however, that detention for purposes of continuing an investigation did not fall within the administrative steps incident to arrest and was inimical to the Fourth Amendment. *Kanekoa*, 879 F.2d at 612.

Kanekoa is fully consistent with the present case. Nothing in this decision precludes the police from interviewing an arrestee as an administrative step incident to arrest. Indeed, as acknowledged by Petitioner [Petition, p. 3], Respondent was interviewed in connection with the Area 3 crimes after he was arrested. No claim has ever been advanced that this interview violated the dictates of

Gerstein or *McLaughlin* or was otherwise impermissible as an administrative step incident to arrest.[4]

Petitioner's reliance on *Adekunle* is similarly unavailing. In *Adekunle*, a magistrate ordered an x-ray of the defendant, a suspected alimentary canal drug smuggler, within 48 hours of detention. The Fifth Circuit concluded that the magistrate's order constituted "an implicit determination that there was reasonable suspicion to warrant the continued detention." 2 F.3d at 562. Thus, unlike the law enforcement officials here, the law enforcement officials in *Adekunle* obtained the timely review of a neutral magistrate rather than relying solely on their own determination of probable cause.

Finally, Petitioner suggests that the Seventh Circuit's decision will undermine legitimate law enforcement interests. [Petition, pp. 18-19] It is not clear how this decision could cause this to occur. As is made clear by Petitioner's own statement of facts, as part of the administrative steps incident to arrest, the police had an opportunity to interrogate Respondent, place him in a series of line-ups, run a check on his fingerprints, and consult with an Assistant State's Attorney about charging decisions. [Petition, p. 3] It has never been contended that any of these steps was impermissible or that the delay attributable to these acts was unreasonable under either *Gerstein* or *McLaughlin*.

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[4] The same analysis applies to Petitioner's citation to *People v. Clark*, 833 P.2d 561 (Cal. 1992), cert. denied, 113 S.Ct. 1604 (1993). *Clark* also involved interrogation of an arrestee shortly after the arrestee was taken into custody. Nothing in *Willis* conflicts with either *Clark* or *Kanekoa*.

Nothing in the Seventh Circuit's opinion can even remotely be read as preventing the police from conducting these standard procedures. What the Seventh Circuit's decision forbids is detention beyond the time necessary to process a detainee for the crime for which the detainee has been arrested in order to allow the police to conduct a further investigation as to other suspected criminal acts either to establish probable cause for these other crimes or to identify "all relevant information" concerning these incidents for use in making bail determinations. Such a limitation clearly falls within the dictates laid down in *McLaughlin*.

CONCLUSION

The Seventh Circuit correctly applied *Gerstein* and *McLaughlin* in holding that the delay in bringing an arrestee before a neutral magistrate attributable to the police conducting further investigation into other suspected criminal conduct was unreasonable. Nothing in the Seventh Circuit's decision conflicts with *Gerstein*, *McLaughlin* or the decisions of any other circuit. In short, none of the considerations governing review on writ of

certiorari are met by the Petition. Accordingly, the Petition for Writ of Certiorari should be denied.

Date: November 24, 1993

Respectfully submitted,

MACEO G. WILLIS, JR.

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725 ILCS 5/110-5(a)

§ 110-5. Determining the amount of bail and conditions of release. (a) In determining the amount of monetary bail or conditions of release, if any, which will reasonably assure the appearance of a defendant as required or the safety of any other person or the community and the likelihood of compliance by the defendant with all the conditions of bail, the court shall, on the basis of available information, take into account such matters as the nature and circumstances of the offense charged, whether the evidence shows that as part of the offense there was a use of violence or threatened use of violence, whether the offense involved corruption of public officials or employees, whether there was physical harm or threats of physical harm to any public official, public employee, judge, prosecutor, juror or witness, senior citizen, child or handicapped person, whether evidence shows that during the offense or during the arrest the defendant possessed or used a firearm, machine gun, explosive or metal piercing ammunition or explosive bomb device or any military or paramilitary armament, the condition of the victim, any written statement submitted by the victim or proffer or representation by the State regarding the impact which the alleged criminal conduct has had on the victim and the victim's concern, if any, with further contact with the defendant if released on bail, whether the offense was based on racial, religious, sexual orientation or ethnic hatred, the likelihood of the filing of a greater charge, the likelihood of conviction, the sentence applicable upon conviction, the weight of the evidence against such defendant, whether there exists

motivation or ability to flee, whether there is any verification as to prior residence, education, or family ties in the local jurisdiction, in another county, state or foreign country, the defendant's employment, financial resources, character and mental condition, past conduct, prior use of alias names or dates of birth, and length of residence in the community, whether a foreign national defendant is lawfully admitted in the United States of America, whether the government of the foreign national maintains an extradition treaty with the United States by which the foreign government will extradite to the United States its national for a trial for a crime allegedly committed in the United States, whether the defendant is currently subject to deportation or exclusion under the immigration laws of the United States, whether the defendant, although a United States citizen, is considered under the law of any foreign state a national of that state for the purposes of extradition or non-extradition to the United States, the amount of unrecovered proceeds lost as a result of the alleged offense, the source of bail funds tendered or sought to be tendered for bail, whether from the totality of the court's consideration, the loss of funds posted or sought to be posted for bail will not deter the defendant from flight, whether the evidence shows that the defendant is engaged in significant possession, manufacture, or delivery of a controlled substance or cannabis, either individually or in consort with others, whether at the time of the offense charged he was on bond or pre-trial release pending trial, probation, periodic imprisonment or conditional discharge pursuant to this Code or the comparable Code of any

other state or federal jurisdiction, whether the defendant is on bond or pre-trial release pending the imposition or execution of sentence or appeal of sentence for any offense under the laws of Illinois or any other state or federal jurisdiction, whether the defendant is under parole or mandatory supervised release or work release from the Illinois Department of Corrections or any penal institution or corrections department of any state or federal jurisdiction, the defendant's record of convictions, whether the defendant has been convicted of a misdemeanor or ordinance offense in Illinois or similar offense in other state or federal jurisdiction within the 10 years preceding the current charge or convicted of a felony in Illinois, whether the defendant was convicted of an offense in another state or federal jurisdiction that would be a felony if committed in Illinois within the 20 years preceding the current charge or has been convicted of such felony and released from the penitentiary within 20 years preceding the current charge if a penitentiary sentence was imposed in Illinois or other state or federal jurisdiction, the defendant's records of juvenile adjudication of delinquency in any jurisdiction, any record of appearance or failure to appear by the defendant at court proceedings, whether there was flight to avoid arrest or prosecution, whether the defendant escaped or attempted to escape to avoid arrest, whether the defendant refused to identify himself, or whether there was a refusal by the defendant to be fingerprinted as required by law. Information used by the court in its findings or stated in or offered in connection with this Section may be by way of proffer based upon reliable information offered

by the State or defendant. All evidence shall be admissible if it is relevant and reliable regardless of whether it would be admissible under the rules of evidence applicable at criminal trials.